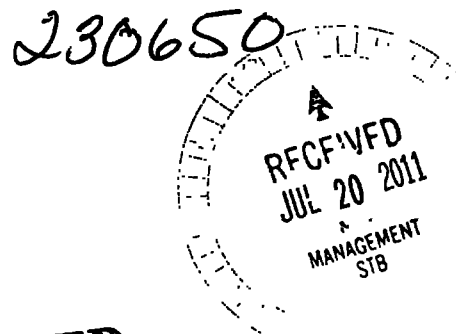


**WEINER
BRODSKY
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July 20, 2011

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JUL 20 2011

**SURFACE
TRANSPORTATION BOARD**

BY HAND

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

EXPEDITED HANDLING REQUESTED

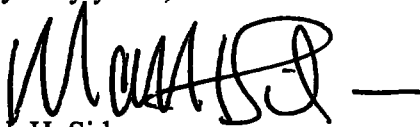
Re: STB Finance Docket No. 35536, Louisville & Indiana Railroad –
Petition for Declaratory Order

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding are an original and 10 copies of the Louisville & Indiana Railroad's Petition for Declaratory Order. Also enclosed is our check in the amount of \$1,400 to cover the filing fee for this proceeding.

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgement copy and returning it to our messenger.

Very truly yours,


Mark H. Sidman

Enclosures

cc: John K. Secor (by e-mail)
Michael J. Daley (by e-mail)

FILED

JUL 20 2011

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Public Record**

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35536



FEE RECEIVED

JUL 20 2011 LOUISVILLE & INDIANA RAILROAD – PETITION FOR
DECLARATORY ORDER

SURFACE
TRANSPORTATION BOARD

EXPEDITED HANDLING REQUESTED

FILED

JUL 20 2011

SURFACE
TRANSPORTATION BOARD

INTRODUCTION

Pursuant to 5 U.S.C. § 554(e), Louisville & Indiana Railroad ("L&I") hereby respectfully petitions the Surface Transportation Board (the "Board") to institute a declaratory order proceeding. The purpose of this Petition is to address whether the construction, by the City of Jeffersonville, IN (the "City") of a crossing over a branch line of L&I, and the corresponding construction by the City of a road (the "Proposed Road") over L&I's railroad property, for which L&I has developed plans to construct a railroad marshaling and cargo transfer yard (the "Railroad Property"), is preempted under federal law. Notably, L&I's plans for the Railroad Property are consistent and compatible with the uses to which the Railroad Property has historically been put.

The construction of the crossing and Proposed Road at this location would unreasonably interfere with L&I's railroad operations, and, therefore, should be preempted by the exclusive jurisdiction of the Surface Transportation Board (the "Board") pursuant to 49 U.S.C. 10501(b). Because construction of the Proposed Road has already begun on property directly abutting the L&I branch line and its Railroad Property, L&I respectfully requests expedited handling of this

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Petition. L&I has requested a stay of further development of the Proposed Road, pending the Board's resolution of this Petition, but that request has not yet been addressed and/or decided.

PROCEDURAL HISTORY

L&I is a class III common carrier by rail. On March 17, 2010, the City filed a petition with the Indiana Department of Transportation ("INDOT") to approve an at-grade crossing of a proposed, new road over certain L&I branch line tracks. On January 18, 2011, INDOT's Rail Office approved the City's petition. On February 4, 2011, L&I filed a petition to review and stay INDOT's order approving the grade-crossing of L&I's branch line (the "INDOT Proceeding"). In the INDOT Proceeding, L&I (1) offered an alternative location for crossing its branch line, stating that the proposed location of the crossing would unreasonably interfere with its railroad operations, and (2) argued that INDOT's jurisdiction to approve the grade crossing at the proposed location was preempted under 49 U.S.C. § 10501(b).

On June 24, 2011, INDOT issued an order affirming its approval of the City's petition. In its June 24, 2011, order, INDOT stated that it "is not qualified to make a legal determination upon the jurisdictional issue."

To address the jurisdictional issue, L&I is filing this Petition. L&I is also filing a petition for review and stay of INDOT's June 24, 2011, order ("L&I Petition for Stay"). In the L&I Petition for Stay, L&I requests INDOT to stay the development of the Proposed Road, pending the Board's determination of whether INDOT has jurisdiction to approve a crossing of L&I's branch line under the relevant facts and circumstances.

STATEMENT OF FACTS

The Proposed Road, as fully developed in connection with the crossing approved by INDOT, would run over the middle of L&I's Railroad Property. The Railroad Property recently

has been used by L&I as a transload facility and was historically used by L&I's predecessors as a rail yard. It is the *only* parcel of land in the Jeffersonville area that is available to L&I for use as a transload site or rail yard. The construction of the Proposed Road in connection with the crossing (and the resulting bisection of the Railroad Property) would unreasonably interfere with L&I's current, as well as future railroad operations.

L&I is currently considering actual plans to develop and utilize the Railroad Property as a railroad marshaling and cargo transfer yard. To that end, L&I has engaged outside consultants, prepared conceptual drawings, and discussed those plans with potential customers.

The development of such a marshaling and transfer yard is anticipated to include three parallel tracks for storing, unloading, and rearranging rail cars. Under L&I's current plans, each parallel track is expected to accommodate a 35-car train, which would remain on the parallel tracks for approximately two months during which time the rail cars would be unloaded. Each parallel track also would have its own access road, on which specialized trucks would travel for the purpose of unloading the rail cars. These tracks and access roads would be bisected by the Proposed Road.

In other words, INDOT is creating a serious safety situation by approving a crossing in this location. If L&I proceeds with its development of a marshaling and transfer yard, the Proposed Road would cross four rail tracks and three roads in a very narrow area. Effectively, then, INDOT needs to approve the creation of four crossings for the Proposed Road, not just the one crossing that was approved.

As noted above, the Railroad Property is the only available L&I property in the area that could be used for developing a rail yard or transload facility. The crossing, as approved by INDOT, would effectively prevent L&I from developing the marshaling and cargo transfer yard.

The Proposed Road, which is linked to the crossing, would bisect the Railroad Property, as well as the currently planned parallel tracks and access roads. Consequently, the Proposed Road would create delays and congestion sufficient to render development of the marshaling and cargo transfer yard untenable. Similarly, the approval of the crossing, and the resulting bisection of the Railroad Property by the Proposed Road, will hinder or restrict any other efforts by L&I to develop the Railroad Property for railroad transportation purposes.

GENERAL ISSUES TO BE ADDRESSED IN PROCEEDING

L&I petitions the Board to institute a declaratory order proceeding to address the unreasonable interference that the crossing of L&I's branch line and associated Proposed Road poses to L&I's railroad operations. The approved crossing will bisect strategic railroad property, essentially depriving L&I from using its rail property for legitimate rail transportation operations. *See City of Lincoln - Petition for Declaratory Order*, STB Finance Docket No. 34425, served Aug. 12, 1994, *aff'd City of Lincoln v. STB*, 414 F.3d 858 (8th Cir. 2005) (finding that "narrowing of the right-of-way to construct a [recreational public hiker/biker] trail would hinder or halt those legitimate transportation operations and create safety hazards").

L&I does not dispute that ***routine*** crossings of railroad track are not preempted. The crossing approved by INDOT is not, however, routine. Moreover, L&I has offered an alternative location for the crossing, which would also allow a road to cross the Railroad Property, but would not interfere with railroad operations. Neither the City nor INDOT has acted on, or accepted that alternative. Accordingly, L&I respectfully requests the Board to declare that INDOT's approval of the crossing at the current location is preempted by 49 U.S.C. §10501(b).

PROCEDURAL SCHEDULE

L&I requests the adoption of the following procedural schedule for this proceeding:

- Day 1: Board institutes a declaratory order proceeding
- Day 20: Petitioner's Opening Statement is due.
- Day 40: Respondent's Reply Statement is due.
- Day 55: Petitioner's Rebuttal Statement is due.

Many of the facts and issues involved in this Petition already have been submitted in prior pleadings by L&I to INDOT. Accordingly, the procedural schedule proposed above should provide ample time for submissions by INDOT and/or the City (should those parties choose to participate in this proceeding).

Respectfully submitted,



Mark H. Sidman
Rose-Michele Nardi
Weiner Brodsky Sidman Kider PC
1300 19th Street NW
Fifth Floor
Washington DC 20036-1609
Attorneys for Louisville & Indiana Railroad

Dated: July 20, 2011

CERTIFICATE OF SERVICE


I hereby certify that the foregoing Louisville & Indiana Railroad – Petition for Declaratory Order was served on July 20, 2011, by first-class mail, postage pre-paid, on the following:

Mr. Mike Riley
Rail Office, Manager
Indiana Department of Transportation
100 North Senate Avenue, ICGN-955
Indianapolis, IN 46204

Honorable Tom Galligan
Mayor, City of Jeffersonville
Suite 250, City Hall
500 Quartermaster Court
Jeffersonville, IN 47130

Ms. Carrie G. Doehrmann
Frost, Brown, Todd LLC
201 N. Illinois Street
Suite 1900
Indianapolis, IN 46244-0961
Counsel for City of Jeffersonville, IN

Mr. Darren Wilder
Attorney - Petitioner
City of Jeffersonville
530 East Court Avenue
Jeffersonville, IN 47130
Counsel for City of Jeffersonville, IN



Mark H. Sidman, Esq.